

EXHIBIT B

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4 CYNTHIA RUSSO, LISA BULLARD,)
5 RICARDO GONZALES,)
6 INTERNATIONAL BROTHERHOOD)
7 OF ELECTRICAL WORKERS)
8 LOCAL 38 HEALTH AND)
9 WELFARE FUND,)
10 INTERNATIONAL UNION OF)
11 OPERATING ENGINEERS LOCAL)
12 295-295C WELFARE FUND, AND)
13 STEAMFITTERS FUND LOCAL)
14 439, on Behalf of)
15 Themselves and All Others)
16 Similarly Situated,)
17)
18 Plaintiffs,) CIVIL NO.:
19) 1:17-cv-02246
20 V.)
21)
22 WALGREEN CO.,)
23)
24 Defendant.)
25

17 ORAL AND VIDEOTAPED DEPOSITION OF
18 JAMES W. HUGHES
19 May 3, 2023
20

1 everything now?

2 A. There's Apple Mac TV, YouTube. Basically --
3 Apple basically is a small country. I don't know what
4 it is.

5 Q. Let's go off the record.

6 A. It has nothing to do with this case.

7 Q. Yeah. Let's go off the record to fix that so
8 it doesn't distract you.

9 A. Okay.

10 THE VIDEOGRAPHER: Off the record at
11 8:14 a.m.

12 (A break was taken from 8:14 a.m. to
13 8:15 a.m.)

14 THE VIDEOGRAPHER: On the record at
15 8:15 a.m.

16 Q. (BY MR. GUGLIELMO) Dr. Hughes, before this
17 break, you mentioned Mr. Karacosky [sic] performed
18 certain analyses.

19 I'm trying to understand. Did he perform
20 queries of the data sets that were produced in this
21 action?

22 A. To be clear, if you mean -- by queries, if you
23 mean like Microsoft Excel queries and the like, no, he
24 did not

25 There were -- as you see in the figures.

1 there were certain observations that were pulled from
2 the data, but -- I'm just going to call him Igor. Igor
3 never did any type of crunching of the numbers, if you
4 will. It wasn't necessary to reach the conclusions that
5 I reached in my report.

6 Q. And so fair to say that the opinions set forth
7 in your report are not based on any queries that could
8 have been run on the transaction?

9 (Reporter clarification.)

10 Q. (BY MR. GUGLIELMO) My question is, is it fair
11 to say that the opinions set forth in your report are
12 not based on any queries that could have been run on the
13 data produced in the action?

14 A. Yes, that's correct.

15 Q. And so do you have a high-level understanding
16 of how Igor was able to extract certain information that
17 ended up in the figures set forth in your report that
18 you just testified to?

19 MR. LEIB: Objection.

20 Q. (BY MR. GUGLIELMO) You can answer.

21 A. Sure.

1 you offered an opinion that class certification was
2 appropriate?

3 A. I actually never offer an opinion as to whether
4 class certification is appropriate.

5 My opinion is limited to examining the
6 analyses of the plaintiffs' experts, and opining on
7 whether I believe that their presented methodology is
8 accurate and reliable for determining classified entry
9 and damages using common proof.

10 Q. And in those actions, have you ever agreed with
11 the plaintiffs' experts that the information offered is
12 -- and the methodology presented is accurate and
13 reliable for determining classified damages?

14 A. No.

15 Because the issues -- the facts are
16 different across some of the cases, but the issues
17 involved in plaintiff's expert reports tend to be
18 roughly the same, and so my criticisms tend to fall into
19 the same categories.

20 Q. Have you ever been asked to offer a classwide
21 damages methodology in any of the 17 cases that you've
22 identified here in Appendix B?

23 A. No. I've never been asked to produce such a
24 methodology.

25 Q. Have you ever tried to create such a

1 but it's Mr. Smith.

2 MR. GUGLIELMO: Oh, okay. Sorry.

3 Q. (BY MR. GUGLIELMO) And with respect to the
4 depositions, I see you identified Mr. Schroff and
5 Ms. Hilton -- Dr. Hilton.

6 Do you see that?

7 A. Yes.

8 Q. Do you know approximately how many depositions
9 were taken in this case?

10 A. Oh, I have no idea.

11 Q. Did you ask to review the list of depositions
12 in this case so that you could confirm for yourself
13 whether or not there was information within those
14 depositions that would potentially influence your
15 opinions?

16 A. That would have been an assignment that I gave
17 to Analysis Group. So I did not do that personally.

18 Q. And what did Analysis Group tell you as to all
19 the depositions that were taken in this case and their
20 relevancy to your opinions?

21 A. I didn't ask them.

22 I worked with Analysis Group a long time,
23 and so I trust their review, and so I didn't ask them
24 specifically what the other depositions were.

25 They knew the analyses that I'd asked them

1 named plaintiffs' data you were looking at for purposes
2 of understanding or supporting the opinions that are set
3 forth in your report?

4 A. I believe -- yes, there was -- I believe it's
5 Mr. Gonzalez. We looked at his data and noticed that
6 there were times when his payment for his prescriptions
7 dropped to zero, and we use that as an example of
8 someone who appeared to have hit their out-of-pocket
9 maximum, and so no longer was required to contribute to
10 the cost of their prescription.

11 Q. In looking at the data entitled
12 "2019.12.03_Named Plaintiffs' Data," did you also review
13 any of the other data sets to compare those data sets to
14 this?

15 MR. LEIB: Objection.

16 A. Yeah. I'm not quite sure exactly what you mean
17 something else to compare these two.

18 Q. (BY MR. GUGLIELMO) Sure.

19 Did you perform any analysis of this
20 particular Excel data set to the other data sets that
21 were produced in this matter?

22 A. No, I don't believe so. That wouldn't have
23 been necessary to reach the conclusions that I do in my
24 report.

25 Q. And you didn't perform any queries of the data,

1 the 2019 data, that is referenced there in Excel,
2 correct?

3 MR. LEIB: Objection, asked and answered.

4 A. Yes, that's correct.

5 Q. (BY MR. GUGLIELMO) If you turn towards the
6 bottom of this section, the next page, for example,
7 "Walgreens_Russo_2015_Data_Sample_20230126.xlsx."

8 Do you see that?

9 A. Probably. I was scrolling and not listening
10 exactly to which data set that you were --

11 Q. Sure.

12 It's on Page 96.

13 A. Okay.

14 Yeah, there's three Walgreens' data --
15 three Walgreens' spreadsheets on this list.

16 Q. Sure.

17 Let's talk about the first one, the
18 "Walgreens_Russo_2015_Data_Sample_20230126.xlsx."

19 Do you see that?

20 A. Yes.

21 Q. What is that?

22 A. That is the sample of Walgreens' transaction
23 data that was provided to us, and it was from the year
24 2015.

25 Q. Who provided you that data set?

1 Is it your understanding that you didn't
2 review any of the documents that Dr. Hilton produced in
3 this action?

4 MR. LEIB: Objection.

5 A. Did I go through her document list and look at
6 all of her documents? No, I didn't.

7 Q. (BY MR. GUGLIELMO) And are you aware that
8 Dr. Hilton produced certain queries of the transactional
9 data set that were also produced with her Bates prefix?

10 A. I understand there were queries that she
11 produced, yes.

12 Q. Okay.

13 And you did not review them for the
14 purposes of offering your opinions in this report,
15 correct?

16 A. No, I didn't.

17 To review those queries wasn't necessary to
18 reach the conclusions that I did in my report.

19 Q. And are you aware that Dr. Smith ran queries in
20 connection with the opinions he offered in his report?

21 A. No, I'm not aware of that. I didn't speak with
22 Dr. Smith. I didn't read his report so -- or Mr. Smith.

23 Q. Okay. Sorry.

24 A. I don't know.

25 Q. All right.

1 And is it fair to say that you're not
2 offering an opinion of any of the queries that
3 Dr. Hilton ran?

4 A. No.

5 It seems to me that some of the things that
6 I have done in my report in response to Dr. Hilton
7 probably, I think, used the results of those queries.
8 So that, you know, I looked at some of the output of her
9 data manipulation to form my opinions. So I don't think
10 it's accurate to say I didn't look at any of the output
11 of those queries.

12 Q. But you're not offering an opinion as to the
13 query she ran? You couldn't have because you didn't
14 read them -- you didn't review them?

15 MR. LEIB: Objection.

16 A. That's right. I did not.

17 To review those queries wasn't necessary to
18 reach the opinions and the conclusions that I did in my
19 report.

20 Q. (BY MR. GUGLIELMO) All right.

21 MR. GUGLIELMO: We can go off the record.

22 THE VIDEOGRAPHER: Off the record at
23 9:38 a.m.

24 (A break was taken from 9:38 a.m. to
25 9:52 a.m.)

1 common injury?

2 A. I am not aware that complete data on that would
3 exist, no.

4 Q. And let me ask you: With respect to PBM data,
5 for example --

6 A. Uh-huh.

7 Q. -- what have you done to determine whether or
8 not the relevant PBMs possess the data that you claim is
9 relevant to the determining common injury?

10 A. Well, that's just it. One of my critiques of
11 Dr. Hilton is she simply states, "Oh, I can get these
12 data from the PBMs," and she offers no proof or other
13 evidence that the PBMs, indeed, possess such data,
14 especially going back as far as 2007.

15 So in my experience in other cases dealing
16 with the PBM data, it tends to be spotty. They don't
17 retain everything. They don't always retain in an
18 accessible fashion. Data that's been acquired through a
19 merger, for example.

20 So I am doubtful that the data that
21 Dr. Hilton lightly assumes that would be readily
22 available to her, I sincerely doubt that it would be
23 either complete or even accurate.

24 Q. With respect to that statement, you haven't
25 actually queried the relevant PBMs as to whether such

1 data exists, correct?

2 A. No.

3 I mean, it's my understanding that it is
4 Dr. Hilton's burden to demonstrate that such data
5 exists. And all I can say is from my experience in
6 other cases in 25 years, I sincerely doubt that the --
7 the type of data that she, again, lightly claims would
8 be readily available, I sincerely doubt that it is.

9 Q. But, again, you offer no evidence, for example,
10 that ESI doesn't maintain no coinsurance field, right?

11 A. Well, you can't prove a negative, but I
12 conducted no analysis. I'm only relying on my prior
13 experience with ESI and Optum and Caremark data that I
14 have dealt with in other cases. That when such data are
15 produced, there can be fields missing; there can be
16 transactions missing; there can be -- it -- just coding
17 mistakes in the data, and just time gaps in the data
18 that just don't have it for certain periods of time.

19 Q. But in the past when you've reviewed ESI data,
20 for example, you've identified coinsurance data,
21 correct?

22 MR. LEIB: Objection.

23 A. No. I don't know that it was relevant to those
24 other assignments that I had. So I couldn't say that I
25 did, no.

1 "Connecticut Reconciliation Data"?

2 A. Yes.

3 Q. Okay.

4 Did you review that?

5 A. I believe I asked Analysis Group to look at it,
6 but I didn't -- don't believe I looked at it personally.

7 Q. All right.

8 And it is not identified in Appendix C, so
9 I would understand it doesn't form the basis of any of
10 your opinions, correct?

11 A. That would be correct.

12 Q. Are you aware of a data set called "ESI PSC
13 Transactional Data"?

14 A. I couldn't tell you if I -- there's a lot of
15 different names and a lot of different data sets. So I
16 don't know whether I'm aware of that particular Bates
17 number or not.

18 Q. Okay.

19 And one of the things you indicated in your
20 report is that you reviewed Dr. Hilton's report,
21 correct?

22 A. Yes.

23 Q. Okay.

24 Did you review any of the data or queries
25 that Dr. Hilton used to create Exhibit 3 of her report?

1 A. I would have to look at Exhibit 3. But as I
2 said, earlier, I did not look at any of her queries
3 because to do so was not necessary to reach the
4 conclusions that I do in my report.

5 Q. Okay.

6 In the course of forming your opinions, did
7 you become aware of data that Walgreens possesses that
8 would have assisted Dr. Hilton in her analysis?

9 A. I have no idea what Walgreens would have
10 produced, and that's up to Dr. Hilton to decide whether
11 it would have assisted in her analysis.

12 Q. With respect to the critiques of her
13 methodology, did you query Walgreens as to whether or
14 not, for example, they possess certain data that
15 presently Dr. Hilton does not?

16 A. I did not communicate with Walgreens at all.

17 Q. Okay.

18 Be fair to say, you didn't ask or have
19 Analysis Group ask Walgreens if they had certain data
20 that you identified as necessary for creating a
21 classwide damages methodology, correct?

22 A. The data that I used was confined to the data
23 that had been produced -- produced in this case by the
24 time I -- report was filed.

25 Q. And is it your understanding that Analysis

1 Group didn't seek to have additional data produced in
2 this case?

3 A. Well, again, we rely in forming reports. Like
4 Dr. Hilton relies on forming reports, we rely on the
5 data that's been produced.

6 And examining the data that Dr. Hilton
7 used, it was inadequate to the task. Whether -- she
8 claims that there's more data that will let her do what
9 she says she wants to do, that remains to be seen.

10 Q. I guess my question is: Are you aware whether
11 or not Analysis Group requested certain data from
12 Walgreens that you contend has not been produced and is
13 required for her analysis?

14 A. I don't know. I don't know whether Analysis
15 Group made such a request or not.

16 Q. Okay.

17 If you turn to Paragraph 10 of your report,
18 you indicate (as read): "Dr. Hilton proposes to rely on
19 selected Walgreens transactional data and selected
20 prescription claims data she assumes would be produced
21 by pharmacy benefit managers (PBMs), who are not members
22 of the class" -- the proposed class."

23 Do you see that?

24 A. Yes.

25 Q. Okay.

1 for example, if you're excluding the transactions from
2 -- all the transactions from one person, then it seems
3 you haven't constructed a methodology that works on a
4 classwide basis.

5 Q. (BY MR. GUGLIELMO) Wouldn't that be more of
6 your constructive conservative methodology as opposed to
7 not having a valid methodology? Isn't that the real
8 concern?

9 MR. LEIB: Objection.

10 A. No.

11 I think it's a shortcoming in the
12 methodology if you have a situation where you might be
13 excluding all the transactions for a particular class
14 member. And we don't know how extensive that might be.
15 Well, Dr. Hilton doesn't know. I don't know, but she's
16 made no attempt to figure this out.

17 Q. (BY MR. GUGLIELMO) You wouldn't know one way
18 or another if the queries that Dr. Hilton produced would
19 allow, for example, you or Dr. Smith to replicate her
20 linking methodology, correct?

21 A. I haven't looked at her queries. That's
22 correct.

23 Q. And you don't know Dr. Smith's queries either.
24 So you don't know how he proposed linking the
25 transactions, correct?

1 A. That's correct.

2 Q. If he linked transactions, would you reconsider
3 your position there in Paragraph 85 --

4 MR. LEIB: Objection.

5 Q. (BY MR. GUGLIELMO) There's --

6 MR. GUGLIELMO: I haven't finished the
7 question. So you can hold off.

8 Q. (BY MR. GUGLIELMO) -- your criticism regarding
9 the linking of transactions?

10 MR. LEIB: Objection.

11 A. No.

12 Again, I have a lot of experience with PBM
13 data going back over many years and across many
14 companies. And the idea that you -- it's just like you
15 say match this number to that number, and that's all you
16 have to do is, in my opinion, fanciful. It's not going
17 to work that way. The data aren't of a sufficient
18 quality to make that linkage on an accurate and reliable
19 and extensive basis going back to 2007.

20 Q. (BY MR. GUGLIELMO) Okay.

21 How often do you perform analyses to link,
22 for example, pharmacy data to PBM data?

23 A. It's not come up in my other work.

24 Q. How often have you done it in the context of
25 litigation?

1 A. I haven't.

2 Q. Okay.

3 And so it's your testimony that you've not
4 attempted to perform such linking? So is it fair to say
5 you wouldn't have an understanding of whether or not
6 it's possible or how complex it would be?

7 MR. LEIB: Objection.

8 A. As a statistician, I think I have an idea of
9 how complex it might be; but, again, I'm relying on my
10 experience with the PBM data and pharmacy data in the
11 past. And what you get from pharmacies and what you've
12 get from PBMs can -- it's -- the quality of the data
13 don't necessarily allow Dr. Hilton's analysis to be
14 done. And it may not -- in my experience, may not even
15 allow such a matching to be done.

16 So, no, it wouldn't. There's been matching
17 done on a relatively small sample from the data. It
18 doesn't convince me that you can do this in an accurate
19 and reliable method over whatever it is a -- back
20 to 2007, how ever many years that is.

21 Q. (BY MR. GUGLIELMO) But one of the -- I think
22 earlier you told me that you decided what aspects of
23 Dr. Hilton's report you were going to respond to,
24 correct?

25 A. Yes.

1 Q. And one of the aspects of the report that
2 you're mentioning here is linking the data, correct?

3 A. Yes.

4 Q. And you didn't think it was necessary to
5 actually attempt to link the data? You just want to
6 provide the critique of linking, but you didn't actually
7 try to link the data yourself here, correct?

8 A. It wasn't something that I was asked to do, and
9 it wasn't something that was necessary to reach the
10 conclusions that I reach in my report.

11 Q. And you have no idea what Dr. Smith's
12 conclusions are as to linking data either, correct?

13 A. No, I don't know anything about Dr. Smith's
14 activities.

15 MR. LEIB: Once, again, he's going to be
16 very happy, but it's Mr. --

17 MR. GUGLIELMO: Mr. Smith. Yes, Mr. Smith.
18 Thank you.

19 Q. (BY MR. GUGLIELMO) Dr. Hughes, is it your
20 understanding that the class definition excludes branded
21 drugs?

22 A. Yes.

23 Q. And if Dr. Hilton's transaction-by-transaction
24 methodology is approved by the court, would a review of
25 brand transactions be relevant in your opinion?

1 Q. If you could turn to, I guess, Figure 3 of your
2 report.

3 A. Okay.

4 Q. And that one says (as read): "Out-of-pocket
5 maximums Dr. Hilton's calculation falsely identifies
6 potential consumer overpayments."

7 Do you see that?

8 A. Yes.

9 Q. Who created this figure?

10 A. Well, again, I asked Analysis Group -- Igor,
11 specifically -- to create an example of how
12 out-of-pocket maximums would effect the -- out-of-pocket
13 maximums can -- out-of-pocket maximums along with the
14 PSC prices, how that would effect the total expenditure
15 of the patients in the actual -- the patient in the
16 actual world and the hypothetical, but-for world.

17 Q. Okay.

18 And the PSC prices, who determined those
19 prices for this figure?

20 A. I believe that would -- that Igor came up with
21 those prices.

22 Q. Do you know if Analysis Group performed any
23 review of, for example, what the average PSC price would
24 be?

25 A. No.

1 It wasn't necessary to create this
2 hypothetical example.

3 Q. And do you know how the PSC prices were
4 determined for this figure?

5 A. No, I didn't inquire. I simply directed
6 Analysis Group to show how the out-of-pocket maximum --
7 the existence of an out-of-pocket maximum would effect
8 the readjudication of the claims over the entire set of
9 claims.

10 Q. So is it fair to say you don't know what the,
11 for example, average PSC price was for the transactional
12 data that was produced in this case?

13 A. It wasn't necessary to create this hypothetical
14 example. And, of course, the average PSC price would
15 vary from month to month and year to year. So it's not
16 like there's a single average PSC price that would be --
17 that would inform this in any way. It's just a
18 hypothetical example.

19 Q. So you don't know whether these prices are
20 above, below, or on average with actual PSC prices,
21 correct?

22 A. That's correct.

23 These prices are hypothetical like
24 everything else in this example.

25 Q. Okay.

1 And why was it that you didn't utilize
2 actual data to create this example?

3 A. Again, it's a hypothetical example showing what
4 could happen to someone when you take the out-of-pocket
5 maximum and lower PSC prices into account.

6 Q. And, again, in this figure, you didn't include
7 any TPP payments or overcharges, correct?

8 A. No.

9 The -- I mean, TPP -- excuse me.

10 Again, the TPP responsibility is implicit
11 in the difference between where there's a 25 percent
12 coinsurance, the 75 percent would be paid by the TPP,
13 but that's implied in the calculation; but it's not used
14 to create any estimate of an overcharge.

15 Q. If you included the TPP calculation here, would
16 the -- wouldn't the \$160 overcharge that Dr. Hilton
17 attributes, wouldn't that, under your hypothesis, be
18 allocated to the TPP as an overpayment?

19 A. That's not something they looked into. This
20 simply is looking at the consumer overpayment.

21 Q. So you don't know what the TPP overpayment
22 would be in this hypothetical using the scenario you set
23 forth here?

24 A. No.

25 Because that would depend on -- see, at the

1 refresh the recollection of your report, if you'd like.

2 A. Yes.

3 Q. Okay. Great.

4 Are you aware of whether Dr. Hilton's
5 methodology takes into account where -- whether
6 manufacturer's coupons were used?

7 A. It does not, to my recollection.

8 Q. Okay.

9 And so you don't know if in the query sheet
10 performed, she excluded transactions from her
11 methodology where the plan type would have included
12 manufacturer coupons?

13 A. I have no idea what you're talking about.

14 Q. Okay.

15 You didn't -- in terms of forming your
16 opinion here, you didn't look to see whether or not her
17 analysis, based on the query she ran, excluded
18 manufacturer's coupons based on the data she reviewed
19 that Walgreens produced?

20 A. Well, that's my point. Why would you exclude
21 them? They're still transactions.

22 Q. My question is, you didn't look at the query to
23 know one way or another whether or not she did exclude
24 manufacturer's coupon transactions from consideration
25 for damages?

1 A. Yeah.

2 As I said numerous times before, I did not
3 look at her queries because it wasn't necessary to reach
4 the conclusions in my report.

5 Q. Well, you say (as read): "To know whether
6 copay coupons used by a consumer apply to their
7 deductible and out-of-pocket maximums, it would be
8 necessary to determine which health plans adopted copay
9 accumulators." I guess, you're talking about two things
10 there.

11 But in terms of the copay accumulator, are
12 you aware that PBMs maintain data as to the use of copay
13 accumulators?

14 A. Yes, I assume that's a part of their
15 adjudication code.

16 Q. Okay.

17 Going back to the bullet -- I think I was
18 referring to about copay coupons. You state (as read):
19 "It would be necessary" -- I think it's in the middle of
20 that. (As read): "It would be necessary to identify
21 which consumer payments in the PBM are Walgreens' data
22 reflect the use of a copay coupon, and remove that
23 amount when determining if a consumer met their
24 deductible or out-of-pocket maximum."

25 Do you see that?

1 A. Yes.

2 Q. Are you aware that data produced in this case
3 does indicate or identify when a copay coupon was used?

4 A. I haven't -- I haven't looked at it. So I
5 don't know one way or another. It wouldn't surprise me
6 if it were.

7 Q. And if it were, would that resolve the concern
8 you have here?

9 A. No. Not really.

10 Because we're -- I mean, we're talking
11 about using transactional data.

12 And while they keep track of the copay
13 coupons and they keep track of the copay accumulators,
14 that doesn't mean that that's going to show up in the
15 transactional data. That's going to be a different
16 file, if you will.

17 Q. But if it is -- if, in fact, was produced in
18 the case, and, in fact, it does exist in the data, would
19 that resolve the concern you have here?

20 A. No.

21 Because it -- sorry.

22 MR. LEIB: Yeah, objection.

23 Go ahead.

24 THE WITNESS: Okay.

25 A. It doesn't.

1 Because, again, in transactional data, if
2 you see somebody hitting their out-of-pocket maximum
3 with a coupon or without a coupon, seeing that they've
4 hit their out-of-pocket maximum in the transactional
5 data doesn't tell you what their out-of-pocket maximum
6 is in order to do the readjudication.

7 Q. (BY MR. GUGLIELMO) I don't believe that was my
8 question.

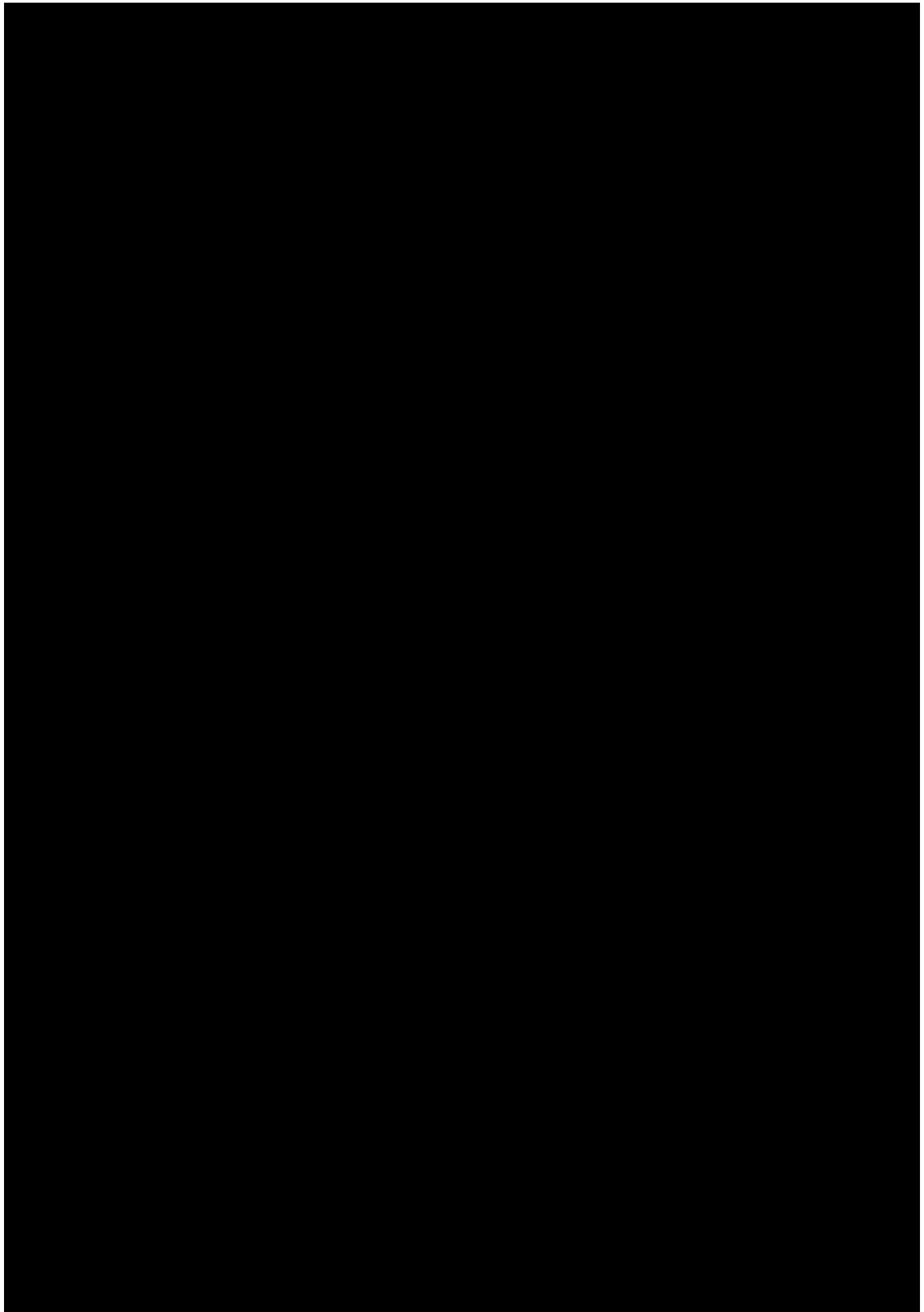
9 MR. GUGLIELMO: I'll move to strike.

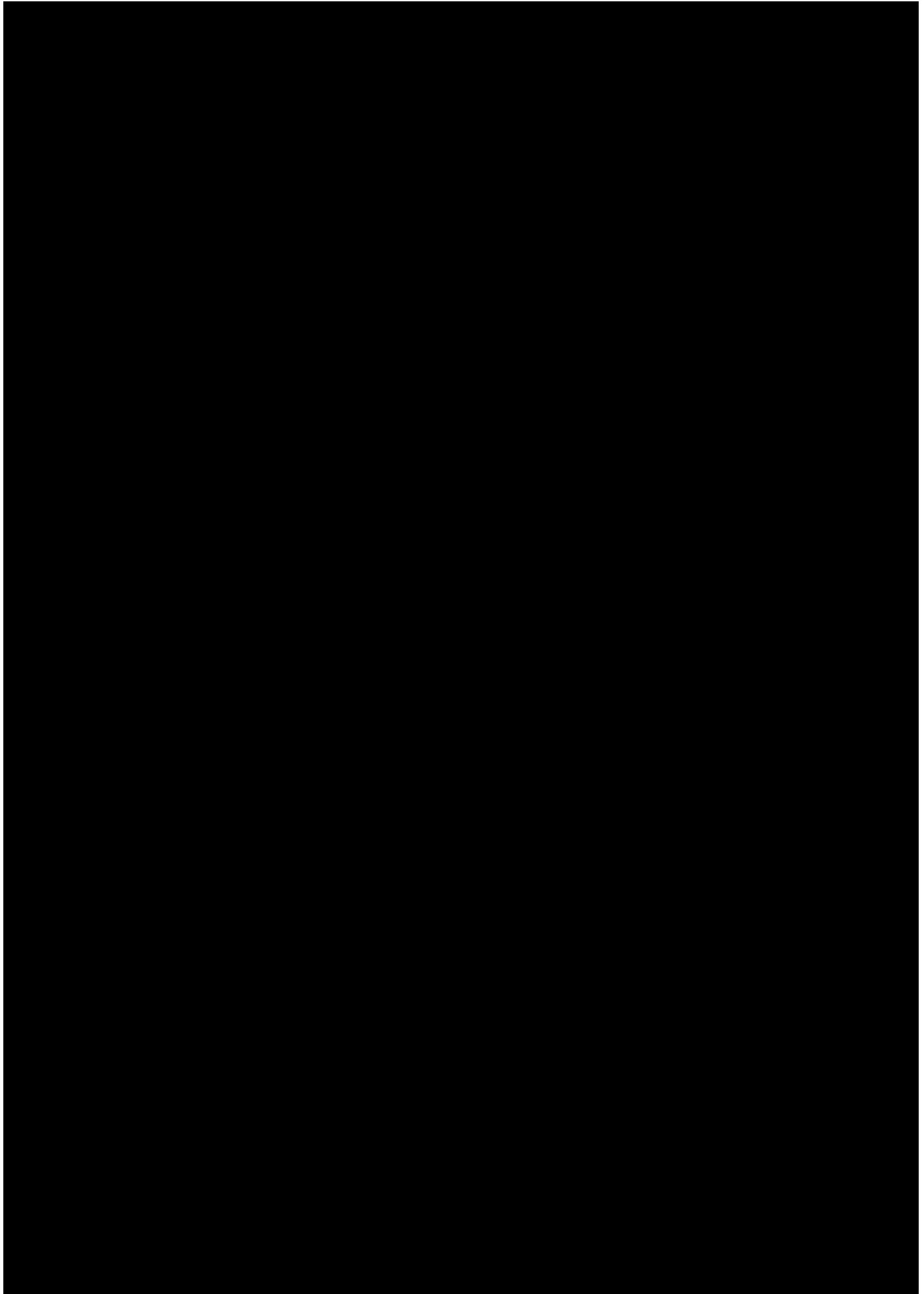
10 Q. (BY MR. GUGLIELMO) I think my question was --
11 but if the data or indicating a copay coupon was, in
12 fact, produced and does exist in the data sets produced
13 by Walgreens and the relevant PBMs, wouldn't that
14 resolve the concern you have here about accounting for
15 copay coupons?

16 MR. LEIB: Objection.

17 A. Well, again, it's that -- where the copay
18 coupons are going to enter into as the last part of the
19 bullet says (as read): "Determining if the consumer has
20 met the deductible or out-of-pocket maximum," the copay
21 coupon will be involved whether they met their
22 deductible or out-of-pocket maximum; but it's not going
23 to reveal what the deductible or out-of-pocket maximum
24 is for purposes of readjudication.

25 Q. (BY MR. GUGLIELMO) Okay.





1 A. No. It was a complete hypothetical, and so all
2 of the prices in here should be considered hypothetical.

3 Q. Okay.

4 Turn to Paragraph 141 of your report. The
5 heading reads --

6 A. Yes.

7 Q. -- "Potentially Tens or Even Hundreds of
8 Thousands of Individual of TPPs Would Need to be
9 Assessed as Possible Members of the Proposed Class."

10 Do you see that?

11 A. Yes.

12 Q. Okay.

13 And below that you cite to and, I believe,
14 rely on Form 5500 information; is that right?

15 A. Yes.

16 Q. Okay.

17 Are you aware of whether or not Walgreens
18 produced data sufficient to identify the third-party
19 payors or plans in this action?

20 A. I don't know.

21 Q. Okay.

22 If you were given access to data relating
23 to the identity of third-party payors, would you rely on
24 that information over the information you have here in
25 the Form 5500 data?

1 A. No, I don't think so.

2 I mean, that's part of the problem when --
3 if Walgreens identifies a so-called, third-party payor,
4 is that a PBM? Is it an ASO or TPA organization? Or is
5 it actually the TPP end payor, who is supposed to be a
6 member of the proposed class.

7 And very often, in my experience in the PBM
8 data, they are listing as the "TPP." They're listing the
9 ASO organization, which is very common because
10 self-insured -- in employer's insurance, self-insurance
11 is very common, and so using an insurance company to
12 administer the plan is quite common.

13 Q. Do you have any understanding that whether or
14 not Dr. Smith reviewed Walgreens' data to identify the
15 number of health plans who had claims adjudicated by the
16 relevant PBMs?

17 A. No, I'm not aware of anything that Dr. Smith --
18 Mr. Smith did.

19 Q. Okay. Yes, Mr. Smith. Thank you.

20 And so you're not aware of whether
21 Mr. Smith offered a methodology to identify plans who
22 had claims adjudicated by relative PBMs?

23 A. Again, I didn't read Dr. Smith -- excuse me --
24 Mr. Smith's report, nor did I speak with him about his
25 conclusions.

1 Q. Okay.

2 In looking at the list that you have here,
3 for example -- 2010, 2011, going onto 2013 -- in terms
4 of counting plans -- and you have 276,000 there, for
5 example, fully insured -- would you have counted a
6 single plan for each year? So such that, if there's one
7 single plan, you've counted it ten times?

8 A. Yes, that would be the case here.

9 Because there are -- over that time period,
10 there are plans that maintain the entire ten-year
11 period. There are plans that disappear from the data
12 because they have changed or gone out of business or
13 whatever the case is, and there's new plans that come
14 along.

15 So, yes, this is a raw summation, and you
16 are correct that if there was one plan that was in there
17 in each of the ten years, it would be counted ten times.
18 That's correct.

19 Q. And do you know what data fields exist within
20 Walgreens' data that would allow the parties to identify
21 unique plans?

22 MR. LEIB: Objection.

23 A. Again, when you say "identify plans," are you
24 identifying the class members as the plan, or are you
25 identifying some other entity like a PBM or an ASO as

1 the plan?

2 Q. (BY MR. GUGLIELMO) Well, let's start with --
3 let's start with, for example, a third-party payor such
4 as one of the plaintiffs in this action.

5 Are you aware of the data fields that exist
6 within Walgreens' data that would allow the parties to
7 identify, for example, Steamfitters?

8 A. Right.

9 But the union benefit plans are different
10 because they're contracting directly with -- directly
11 with the PBM. There's no other entity between the PBM
12 and the Steamfitters.

13 That's not the case for most of the
14 employer self-insured plans. They -- the self-insured
15 plans, more often than not, do not contract directly
16 with the PBM, but rather contract with an insurance
17 company to administer their claims; and it's that
18 insurance company that usually appears in the data
19 usually in my experience.

20 MR. GUGLIELMO: Move to strike.

21 Q. (BY MR. GUGLIELMO) My question is, have you
22 reviewed the data within Walgreens' systems to determine
23 whether or not that data would be sufficient to allow
24 the parties to identify, for example, Steamfitters?

25 A. Well, again, they can -- they can identify

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1 Steamfitters only because that they have contracted
2 directly with the PBM. And as far as reviewing the
3 Walgreens' data, it's neither here nor there.

4 Because, again, in my experience, the --
5 what's listed as the TPP may be the class member. But
6 for self-insured plans, more often than not, it's not
7 the class member. It's the ASO representative.

8 Q. So it's your opinion that you don't need to
9 look at Walgreens' data to form an opinion that you
10 can't identify what, for example, plan is actually
11 attributed to that transaction?

12 MR. LEIB: Objection.

13 A. No.

14 I mean, I have -- I've seen pharmacy
15 transaction data and PBM data all along, and it's quite
16 common that it's not the actual end payor. It's not the
17 actual class member that is represented in the data.

18 Q. (BY MR. GUGLIELMO) Again, my question is, did
19 you look at -- is it your opinion you don't need to look
20 at Walgreens' data to render this opinion? In other
21 words, you haven't looked at Walgreens' data as to this
22 issue. You don't need to look at it to render this
23 opinion, correct?

24 MR. LEIB: Objection.

25 A. From my experience, I would not need to look at

1 the Walgreens' data to render this opinion. That's
2 correct.

3 Q. (BY MR. GUGLIELMO) And you're not relying on
4 whether or not the data contains fields sufficient to
5 identify whether it's a TPP, whether it's an ASO, and
6 all the other concerns that you just identified,
7 correct?

8 A. I have not reviewed the Walgreens' data for
9 that, but, no. I'll leave it at that. I have not
10 reviewed the Walgreens' data for that.

11 Q. And you don't know if Dr. Smith has -- or
12 Mr. Smith?

13 A. Yes. I don't know anything that Mr. Smith may
14 have done.

15 Q. Okay.

16 Dr. Hughes, are you offering an opinion as
17 to whether or not Walgreens' data is accurate?

18 A. Depends on what you mean by "accurate."

19 Q. Are you offering an opinion as to whether or
20 not Walgreens' data is accurate to allow the parties to
21 create a classwide method to identify damages?

22 A. To TPP class members?

23 Q. To class members.

24 A. Well, there's two types of class members, and
25 so I need to know which one we're talking about.

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4 CYNTHIA RUSSO, LISA BULLARD,)
5 RICARDO GONZALES,)
6 INTERNATIONAL BROTHERHOOD)
7 OF ELECTRICAL WORKERS)
8 LOCAL 38 HEALTH AND)
9 WELFARE FUND,)
10 INTERNATIONAL UNION OF)
11 OPERATING ENGINEERS LOCAL)
12 295-295C WELFARE FUND, AND)
13 STEAMFITTERS FUND LOCAL)
14 439, on Behalf of)
15 Themselves and All Others)
16 Similarly Situated,)
17)
18 Plaintiffs,) CIVIL NO.:
19))
20 v.)
21)
22 WALGREEN CO.,)
23)
24 Defendant.)
25

16 REPORTER'S CERTIFICATION
17 DEPOSITION OF JAMES W. HUGHES
18 May 3, 2023

19 That the deposition transcript was delivered
20 to Mr. Joseph Guglielmo.

21 That a copy of this certificate was served on
22 all parties and/or the witness shown herein on
23 _____.

24 I further certify that pursuant to FRCP Rule
25 30(f)(1) that the signature of the deponent:

(X) was requested by the deponent or a party before the completion of the deposition and that signature is to be before any notary public and returned within 30 days from date of receipt of the transcript.

5 If returned, the attached Changes and
6 Signature Page contains any changes and the reasons
7 therefore:

8 () was not requested by the deponent or a
9 party before the completion of the deposition.

10 I certify that I am neither counsel for,
11 related to, nor employed by any of the parties or
12 attorneys in the action in which this proceeding was
13 taken, and further that I am not financially or
14 otherwise interested in the outcome of the action.

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1 CYNTHIA RUSSO, et al. vs. WALGREEN CO.

2 5/3/2023 - James W. Hughes (#5881051)

3 E R R A T A S H E E T

4 PAGE 13 LINE 19 CHANGE "2021" to 2020"

5 REASON correcting testimony

6 PAGE 16 LINE 3 CHANGE "exclusively for occasionally" to
7 "exclusively except for occasionally"

8 REASON transcription error

9 PAGE 24 LINES 7-10 CHANGE "Specifically, I don't know what analysis
10 he would have done when we would have conference calls to discuss
11 the - the work so far. Dr. Mortimer was usually on those calls" to
12 "Specifically, I don't know what analysis he would have done. When
13 we would have conference calls to discuss the - the work so far,
14 Dr. Mortimer was usually on those calls"

15 REASON transcription error

16 PAGE 24 LINE 22 CHANGE "pulled the samples the data" to "pulled the
17 samples of the data"

18 REASON transcription error

19 PAGE 26 LINE 25 Add "the" - "if you turn to the page"

20 REASON transcription error

21 PAGE 27 LINE 3 CHANGE "off" to "on"

22 REASON transcription error

23 PAGE 32 LINE 7 CHANGE "is" to "are"

24 REASON transcription error

25 PAGE 38 LINE 17 CHANGE "by" to "of"

26 REASON transcription error

27 PAGES 40-41 LINE 25-1 ADD "at" - "transmitted to counsel at"

28 REASON transcription error

1 PAGE 51 LINE 4 ADD "a" - "plain with a drug benefit"

2 REASON transcription error

3 PAGE 54 LINE 9 ADD "not" - "I regretfully say they are not
4 publishable"

5 REASON transcription error

6 PAGE 54 LINE 11 CHANGE "through" to "them"

7 REASON transcription error

8 PAGE 57 LINE 8 CHANGE "classified" to "classwide"

9 REASON transcription error

10 PAGE 60 LINE 6 CHANGE "answer" to "ask for"

11 REASON transcription error

12 PAGE 61 LINE 1 CHANGE "Dymond" to "Dymon"

13 REASON transcription error

14 PAGE 61 LINE 6 CHANGE "Dymond's" to "Dymon's"

15 REASON transcription error

16 PAGE 62 LINE 22 ADD "For" - "Analysis Group for a long time"

17 REASON transcription error

18 PAGE 65 LINE 5 CHANGE "Gonzalez" to "Gonzales"

19 REASON transcription error

20 PAGE 70 LINE 13 CHANGE "picked" to "pick"

21 REASON transcription error

22 PAGE 72 LINE 18 CHANGE "it's not, but it's what we got" to "it's
23 not, but it's - what we got"

24 REASON transcription error

25 PAGE 72 LINE 25 CHANGE "as" to "to"

26 REASON transcription error

27 PAGE 78 LINE 10 CHANGE "academy" to "academic"

28 REASON transcription error

1 PAGE 84 LINE 21 CHANGE "lightly" to "likely"
2 REASON transcription error
3 PAGE 84 LINE 21 DELETE "likely"
4 REASON clarification of testimony
5 PAGE 85 LINE 7 CHANGE "lightly" to "likely"
6 REASON transcription error
7 PAGE 85 LINE 7 DELETE "likely"
8 REASON clarification of testimony
9 PAGE 89 LINE 12 CHANGE "Express Scripts" to "Walgreens"
10 REASON correction of testimony
11 PAGE 90 LINE 3 CHANGE "classified" to "classwide"
12 REASON transcription error
13 PAGE 90 LINE 12 CHANGE "perceives" to "proceeds"
14 REASON transcription error
15 PAGE 91 LINE 11 CHANGE "classified" to "classwide"
16 REASON transcription error
17 PAGE 91 LINE 13 CHANGE "classified" to "classwide"
18 REASON transcription error
19 PAGE 91 LINES 22-23 CHANGE "No. In the end, I was not asked to
20 offer an opinion on her unjust enrichment methodology" to "Dr.
21 Hilton's unjust enrichment methodology relies in part on her
22 ability to demonstrate that she can identify overpayments by class
23 members using common proof, which I am offering an opinion on. But,
24 no, I am not offering a separate opinion on her unjust enrichment
25 methodology beyond the part that addresses the inability of Dr.
26 Hilton's methodology to identify overpayments by class members"
27 REASON Correction of testimony
28

1 PAGE 94 LINE 5 CHANGE "I believe I asked Analysis Group to look at
2 it but I didn't - don't believe I looked at it personally" to "I
3 don't believe I looked at it personally"

4 REASON correction of testimony

5 PAGE 95 LINE 24 CHANGE "I" to "my"

6 REASON transcription error

7 PAGE 96 LINE 4 CHANGE "relies on" to "relies on in"

8 REASON transcription error

9 PAGE 97 LINE 10 CHANGE "data not" to "data is not"

10 REASON transcription error

11 PAGE 98 LINE 25 ADD "an" - "I am offering an opinion"

12 REASON transcription error

13 PAGE 103 LINE 1 CHANGE "methodology, it's" to "methodology is"

14 REASON transcription error

15 PAGE 104 LINE 22 DELETE "a" - "based on U&C"

16 REASON transcription error

17 PAGE 109 LINE 5 ADD "the" - "are made well after the transaction"

18 REASON transcription error

19 PAGE 109 LINE 20 CHANGE "practice" to "pricing"

20 REASON transcription error

21 PAGE 110 LINE 22 CHANGE "effect" to "affect"

22 REASON transcription error

23 PAGE 111 LINES 4-8 CHANGE "The GER payment formula is contained in

24 the contract between the TPP and the PBM, and Walgreens would

25 typically not have access to the terms of that contract. So I

26 would think your answer - the answer to your question would be no"

27 to "The GER payment formula I refer to in my report is contained in

28 the contract between the TPP and the PBM, and Walgreens would

1 typically not have access to the terms of that contract. So I would
2 think your answer -- the answer to your question would be no
3 because Walgreens does not charge the TPP. That GER payment should
4 be considered, however, in connection with evaluating any
5 overcharge paid by the TPP that Plaintiffs claim resulted from
6 Walgreens not reporting its PSC prices as its U&C prices to the
7 PBMs."

8 REASON Correction of testimony

9 PAGE 113 LINE 21 CHANGE "identifying" to "identifiable"

10 REASON transcription error

11 PAGE 115-116 LINES 25-1 CHANGE "overpayments as she calculates
12 derivative from the consumers overpayments that she calculates" to
13 "overpayments she calculates derives from the consumer overpayments
14 that she calculates"

15 REASON transcription error

16 PAGE 117 LINE 14 CHANGE "either individual" to "either an
17 individual"

18 REASON transcription error

19 PAGE 118 LINE 9 CHANGE "effect" to "affect"

20 REASON transcription error

21 PAGE 119 LINES 2-4 CHANGE "I do believe that there were cases where
22 one of the named plaintiff received a stop-loss payment" to "I do
23 believe that there were cases where one of the named plaintiffs
24 purchased stop-loss insurance"

25 REASON correction of testimony

26 PAGE 122 LINE 10 ADD "a" - "I can't really identify a"

27 REASON transcription error

28 PAGE 130 LINE 13 CHANGE "Gonzalez" to "Gonzales"

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1 REASON transcription error
2 PAGE 133 LINE 5 CHANGE "classified" to "classwide"
3 REASON transcription error
4 PAGE 133 LINE 13 CHANGE "classified" to "classwide"
5 REASON transcription error
6 PAGE 134 LINE 15 CHANGE "there" to "that"
7 REASON transcription error
8 PAGE 136 LINE 16 CHANGE "linking" to "link"
9 REASON transcription error
10 PAGE 136 LINE 17 CHANGE "classified" to "classwide"
11 REASON transcription error
12 PAGE 141 LINE 4 CHANGE "that" to "then"
13 REASON transcription error
14 PAGE 144 LINE 7 CHANGE "calculation overstates" to "calculation
15 that overstates"
16 REASON transcription error
17 PAGE 145 LINE 14 CHANGE "effect" to "affect"
18 REASON transcription error
19 PAGE 152 LINES 19-20 CHANGE "Determining if the consumer has met
20 the deductible" to "Determining if a consumer has met their
21 deductible"
22 REASON clarification of testimony
23 PAGE 162 LINE 19 ADD "of" - "or that it would be of sufficient
24 quality"
25 REASON transcription error
26 PAGE 167 LINE 18 CHANGE "been produced" to "have been produced"
27 REASON transcription error
28

1 PAGE 170 LINES 23-24 CHANGE "the classwide data would show because
2 it's only 2015" to "the classwide data would show because it's only
3 2014 and 2015"

4 REASON correction of testimony

5 PAGE 171 LINE 17 CHANGE "Well, again, as I said, this is only for
6 2015" to "Well, again, as I said, this is only for 2014 and 2015"

7 REASON correction of testimony

8 PAGE 175 LINE 17 DELETE "[Sic]"

9 REASON unnecessary

10 PAGE 175 LINES 18-20 CHANGE "And, again, she didn't - she didn't
11 use the data to separate when she was doing for Steamfitters" to
12 "And again, she didn't - she didn't use the data to separate copay
13 and coinsurance when she was doing the analysis for Steamfitters"

14 REASON clarification of testimony

15 PAGE 176 LINE 2 ADD "is" - "We don't know what is there"

16 REASON transcription error

17 PAGE 177 LINES 9-10 CHANGE "that it's not" to "that she cannot"

18 REASON transcription error

19 PAGE 180 LINE 20 CHANGE "consumers" to "consumers'"

20 REASON transcription error

21 PAGE 183 LINE 17 CHANGE "manufacturer's discount" to "manufacturer
22 discounts"

23 REASON transcription error

24 PAGE 188 LINE 1 DELETE "that"

25 REASON transcription error

26 PAGE 202 LINE 11 CHANGE "Hey" to "hey"

27 REASON transcription error

28 PAGE 202 LINE 12 CHANGE "and" to "in"

1 **REASON transcription error**

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1 CYNTHIA RUSSO, et al. vs. WALGREEN CO.

2 5/3/2023 - James W. Hughes (#5881051)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, James W. Hughes, do hereby declare that I have read the
5 foregoing transcript, I have made any corrections, additions, or
6 changes I deemed necessary as noted above to be appended hereto,
7 and that the same is a true, correct and complete transcript of the
8 testimony given by me.

9

10

11 I declare under penalty of perjury under the laws of the United
12 States that the foregoing is true and correct.

13 
14

15

James W. Hughes

16

17

18 This 16 day of June, 2023

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